

§ 40.325

(c) If you are a service agent, and the employer requests its employee's drug or alcohol testing information from you to use in a legal proceeding as authorized in paragraph (a) of this section (*e.g.*, the laboratory's data package), you must provide the requested information to the employer.

(d) As an employer or service agent, you must immediately notify the employee in writing of any information you release under this section.

§ 40.325 [Reserved]

§ 40.327 When must the MRO report medical information gathered in the verification process?

(a) As the MRO, you must, except as provided in paragraph (c) of this section, report drug test results and medical information you learned as part of the verification process to third parties without the employee's consent if you determine, in your reasonable medical judgment, that:

(1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or

(2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.

(b) The third parties to whom you are authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.

(c) If the law of a foreign country (*e.g.*, Canada) prohibits you from providing medical information to the employer, you may comply with that prohibition.

§ 40.329 What information must laboratories, MROs, and other service agents release to employees?

(a) As an MRO or service agent you must provide, within 10 business days of receiving a written request from an

49 CFR Subtitle A (10–1–12 Edition)

employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. You may charge no more than the cost of preparation and reproduction for copies of these records.

(b) As a laboratory, you must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (*i.e.*, laboratory report and data package). You may charge no more than the cost of preparation and reproduction for copies of these records.

(c) As a SAP, you must make available to an employee, on request, a copy of all SAP reports (see § 40.311). However, you must redact follow-up testing information from the report before providing it to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.331 To what additional parties must employers and service agents release information?

As an employer or service agent you must release information under the following circumstances:

(a) If you receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, you must provide the information to the identified person. For example, as an employer, when you receive a written request from a former employee to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.

(b) If you are an employer, you must, upon request of DOT agency representatives, provide the following:

(1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.

(2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documenta-tion, agreements, contracts, policies, and statements that are required by